



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

February 8, 2022

Re: FOIA Request NLRB-2022-000523

Dear Joshua R. Eidelson (Bloomberg News):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on February 2, 2022, in which you seek “the RD order dated February 1” in *Starbucks Corporation*, Case No. 08-RC-288697. You assumed fees for the processing of your request in the amount of \$37.00.

We acknowledged your request on February 2, 2022.

Your request is granted in part and denied in part, as explained below.

Your request is granted to the extent that I have attached the requested record, an “Order Referring Employer’s Petition to Revoke Subpoena Duces Tecum No. B-1-1ERVAJ9 to Hearing Officer,” which is attached.

Please be advised that the Agency’s Region 8 staff confirmed that the issues referred to in the RD Order relating to the petition to revoke the subpoena were resolved informally, so that there will be no ruling by the Hearing Officer.

In addition, this NLRB case remains pending in Region 8. Given the open status, the attachments to the RD Order are withheld pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Because of the resultant harm that could reasonably occur with disclosing any investigatory case file records while the proceedings are ongoing, I am withholding the attachments at this time.

Exemption 7(A) protection, however, is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). That is, case file records may become disclosable, subject to applicable exemptions, after the case closes, a certification of results has issued, a bargaining representative has been certified, or the matter is otherwise closed

under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/08-RC-288697>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (202) 368-1927 or by email at Jodilyn.Breirather@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

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You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (one page)